

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIE A. PAYNE,

Defendant-Appellant.

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UNPUBLISHED

April 1, 2003

No. 236164

Oakland Circuit Court

LC No. 01-177923-FH

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury convictions for carrying a firearm with unlawful intent, MCL 750.226, felon in possession of a firearm, MCL 750.224, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court employed the wrong standard in denying the directed verdict, and there was insufficient evidence to support the carrying a firearm with unlawful intent and felony-firearm charges. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Although in denying a directed verdict the trial court only stated that a fact question existed, there was sufficient evidence to support defendant's convictions. A police officer testified that he saw defendant point a weapon at a crowd of people. Resolving any credibility issues in favor of the prosecution, this testimony is sufficient to establish that defendant carried the firearm with unlawful intent.

The prosecutor did not abuse his discretion in charging defendant. The prosecutor has broad discretion in determining under which of two applicable statutes a prosecution will be initiated. *People v Patterson*, 212 Mich App 393, 394; 538 NW2d 29 (1995). That discretion is not limited, and when two statutes prohibit the same conduct, charges must be brought under the

more specific, most recently enacted statute. *Id.*, 394-395. If statutes prohibit different conduct, the prosecutor has the discretion to charge under either statute. *People v Peach*, 174 Mich App 419, 427-428; 437 NW2d 9 (1989).

Here, the two statutes were directed at different conduct. The misdemeanor offense, MCL 750.234e, prohibits the brandishing of a firearm in public. It does not have an element of unlawful intent. Had defendant not pointed the gun at the crowd, he would have been properly charged with only the misdemeanor offense.

There is no showing that the prosecutor acted vindictively in charging defendant. The charge was supported by the evidence, and there is no indication that the prosecution was motivated by spite. *People v Buie*, 126 Mich App 39; 337 NW2d 305 (1983).

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray